Public Employees for Environmental Responsibility
PEER
Protecting Employees Who Protect Our Environment
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Via E-mail (WesternComments@ecy.wa.gov)
Department of Ecology
Water Quality Program
Municipal Stormwater Permits
P.O. Box 47696
Olympia, WA 98504-7696
Attention: Ann Wessel

Re: Public Employees for Environmental Responsibility's Comments on Draft Phase I Municipal Stormwater General Permit

Dear Ms. Wessel:

Washington Public Employees for Environmental Responsibility (PEER) would like to make a few general comments about the draft Phase I Municipal Stormwater General Permits and follow with more detailed comments. We thank you for your consideration of our concerns.

General Comments:

For over a decade Ecology has worked to establish a NPDES permitting system and it has done so in an extraordinary passive manner. Ecology's Draft Phase I and II Municipal Stormwater NPDES and State Waste Discharge General Permit provides a far from robust permitting, monitoring and enforcement program. The shortcomings of this program should be addressed at this time and not be allowed to rollocontinuever until the next permit cycle. The permit must outline the standards for water quality protection and the protocols needed to implement and maintain safe water quality for these bodies of water and the listed and threatened species that live within them.

The program as described has no specific, defendable scientific water quality standards (numeric effluent levels), no protocols for monitoring that create real-time protection, no requirement for compliance to the standards and no enforcement capacity. What is outlined (essentially a paper exercise to permit the dumping of pollutants) is staggering in

its vagueness, ponderous time line and low expectation for implementation of protections of our state's waters.

PEER believes that now is the time for Ecology to create a comprehensive Water Quality program. A program that not only grants permits but provides oversight, monitoring, compliance and enforcement procedures in a timely fashion so that the natural resources of the public trust are protected.

PEER recently released a report on the effect on Puget Sound Chinook Salmon of NPDES Authorized Toxic Discharges as Permitted by Washington Department of Ecology (see attachment). The conclusion of that report is that 1) the composition of toxic contamination in Puget Sound matches the types of chemical that Ecology's NPDES permits authorizes. 2) The NPDES' Whole Effluent Toxicity (WET) testing on organisms fails to capture the synergistic effects of effluent toxic chemicals acting together. 3) WET testing does not characterize bioaccumulative effects of toxic contaminants. 4) Ecology authorized NPDES discharges are the major sources of toxic chemicals on an ongoing basis. 5) Ecology routinely overestimates effluent dilution in their permit evaluations resulting in the release of harmful concentrations of toxic contaminants. 6) Ecology's existing NPDES process fails to identify many sources, magnitudes of toxic contaminants the authorize for release.

This report is one of many that looks at the status of Chinook salmon and find that pollutant concentrations may initiate many of the deleterious (sub-lethal) effects on salmon populations and be responsible for the sharp population decline. Sub-lethal concentrations of individual pollutants impair physiological functions at every state of life history of the salmon. 1) They interfere with the biochemical machinery of the cells. 2) Show various neurotoxic effects that interfere with normal, survival behavior. 3) The inhibit olfactory system to interfere with homing, predator avoidance and spawning. 4) They interfere with the immune system and lead to increased mortality of disease. 5) They increase the incidence of carcinogenesis, interfere with developmental process, act as endocrine disrupters and 8) in some cases persist and bioaccumulate.

For this reason the ESA requirements that widespread pollutants be regulated to ensure the continuing survival of the salmon population of Puget Sound must be incorporated into the standards of this permit. Because of the challenge to the Environmental Protection agency for its failure to consult on NPDES program, PEER strongly recommends that the permit contains an explicit "reopener clause" requiring Ecology to make changes to the permit at EPA's request.

Specific Comments:

- The compliance section should be modified to implement EPA's water quality standards for priority toxic pollutants except where they do not provide the protection necessary to protect listed and threatened species. Specifically, require that the numeric effluent limitation for dissolved copper be 1 ppb to protect Chinook salmon.

- The compliance section should outline what violations of surface, groundwater, sediment management and human health-standards are specifically.

- Permittees should be required to meet these standards as opposed to "reduce the discharge of pollutants to the maximum extent practicable". That mandate is far too weak of criteria.

- Timelines in the compliance section are far too long especially in light of the more than ten years the permittees have had to complete many of these tasks. PEER strongly recommends cutting these timelines and progressing in a timely fashion to implement the parameters of the permit.

- All known municipal separate storm sewer outfalls should be mapped in six months. Fines should be levied if this is not completed in time.

- The map of attributes listed in the draft permit for all storm sewer outfalls should be finished within one year. Fines should be levied if this is not completed in time.

- Permittees' database should be made available to the public with information on precipitation, stormwater quality and quantity records and water quality and physical characteristics of receiving water should be up and running and available for public scrutiny in 18 months.

- The permit should establish appropriate Low Impact Development standards to be incorporated into the permittees' programs.

- Compliance with inspection requirements should be required within one year and encompass all sites.

- The inspection program should be based on a system with established criteria for monitoring. Data collected should be sampled in such a fashion as to be reproducible and comparable. It is necessary to record when data was collected in a storm cycle and what the preexisting weather conditions were. The amount and duration of the period of rain should also be recorded.

- All data collected should be collected and reported in a timely fashion – preferably monthly. If results violate the acceptable standards, action to remedy the situation must be triggered immediately, i.e. within 48 hours. This requires mandatory rapid self-report of violations to Ecology that will require the development of compliance schedule and subsequent follow-up inspections otherwise the permits should be suspended.

- Compliance to the standards for effluents outlined in the permit should be mandatory. Lack of compliance to the standards should result in the suspension of the permit.

- Benchmarks are a totally unacceptable concept to provide water quality protection. They exceed the standards and therefore do not provide the protection necessary to the natural resources and shouldn't be used.

- Permittees should have 12 months to develop a Structural Stormwater Control program.

- Within 90 days after the effective date of this permit, permittees should establish a program to identify sites which are potentially pollution generating.

- With in six months permittees should implement a self-audit/inspection program for potentially pollutant-generating sites.

- Washington PEER strongly believes that the Phase I and II stormwater permitting program should be coordinated and implemented using a watershed or subbasin approach. This approach should provide uniformity in approach to implementing standards, monitoring protocols and enforcement.

- We also strongly believe that there should be no difference between Phase I and II stormwater permits in terms of standards, implementation timeframe, monitoring protocols and enforcement.

- The collaborative watershed model also should define the source of pollutants and outline and implement regional solutions to pollution such as increased setbacks, increased riparian buffers and treatment trains.

- Violators of NPDES permit requirements should receive specific guidance as how to remedy the violation along with a compliance schedule that is monitored and enforced by Ecology. Improvements should be provided in thirty days.

- Training of new staff should be within 12 months.

- Permittees should initiate an investigation as soon as possible but not later than 48 hours after the discovery of an illicit connection and removal of such connection within thirty days.

- Permittees should be required to develop and implement SWPPPS within 30 days of finalization of this permit.

- Ecology should provide for and manage a centralized data depository that should be easily accessible by the public and transparent to all interested in the data generated within two years.

- Development and implementation of a program to maintain operation and maintenance records for stormwater facilities should occur within eighteen months

- Ports should be required to develop and implement SWPPS within thirty days. Additionally, the Ports should be required to inspect all sites at least once every other year. Ports should label all storm drains within one year.

- SWMP should be available for public review as soon as they are completed and comply with CWA requirements.

- A spill-response plan should be developed and implemented by permittees within thirty days.

- The stormwater-monitoring program MUST identify the degree to which stormwater discharges are impacting selected receiving waters and sediments for the purpose of minimizing or completely eliminating the impact.

- Caltrans of California has developed a monitor program in response to a 1999 lawsuit. PEER strongly suggests that Ecology use established successful monitoring programs to provide guidance for implementation of an effective program.

- Any monitoring program should incorporate bioassessment monitoring to fully characterize the nature and extent of impacts from urban stormwater runoff.

- The monitoring sites listed for Counties and Cities and Ports are insufficient in number to provide the scope and detail of information necessary to protect water quality standards. PEER strongly suggests all commercial and industrial sites be monitored.

- Background monitoring of the receiving water should also be evaluated to provide the baseline information to compare to stormwater discharges.

- PEER recommends that the first stormwater monitoring reports be submitted within one year of finalization of the permit.

- PEER appreciates the opportunity to comment.

Sincerely,

Sue Gunn

Sue Gunn, Ph.D.
Washington State Director